IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 10 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

LOK PRAKASHAN LTD.,

Appearance:

1. INCOME TAX REFERENCE No. 10 of 1989

MR MANISH R BHATT for Petitioner No. 1

MR BD KARIA for MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following two questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 :-

"1. Whether, the Appellate Tribunal on the facts and in the circumstances of the case is right in law in holding that the assessee is entitled to claim allowance of Rs.1,89,596/- under section 40A(7)(b)(i) in respect of the incremental liability for the year 1978?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the claim of Rs.3,95,491/- is allowable under Section 36(1)(v) on the basis of payment to an approved gratuity fund?"

2. The matter pertains to the assessment year 1979-80. The assessee filed a revised return claiming deduction of Rs.1,89,396/- for payment of contribution towards the approved gratuity fund for the liability arising on acturial basis for the previous year ending on 31st December, 1978. Deduction was also claimed in respect of the payment of gratuity to the tune of Rs.3,95,491/-, which was paid in two instalments to the approved gratuity Fund during the accounting year, on 23rd December, 1978 and 27th December, 1978. The I.T.O. disallowed the claim on the ground that the liability pertained to the accounting year 1977 in respect of the sum of Rs.3,95,491/- and also on the ground that the assessee had changed the mode of accounting in respect of payment of gratuity from mercantile to cash. The decision of the I.T.O. was confirmmed by the C.I.T. (Appeals). The Tribunal held in respect of the payment of Rs.3,95,491/- that, though the amount was pertaining to the year 1977, it was allowable under Section 36(1)(v) of the said Act because it was the sum payable by the assessee by way of contribution towards an approved gratuity fund. As regards the incremental liability of Rs.1,89,396/-, the Tribunal held that the sum was allowable under sub-clause (i) of clause (b) of Section 40A(7) of the Act because the bar under clause (a) was not applicable to the cases falling under clause (b).

3. As per the provisions of Section 40A(7)(b)(i), the provisions of clause (a) of sub-section (7) of

Section 40A did not apply to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund or for the purpose of payment of any gratuity that has become payable during the previous year. A provision was made for an amount of Rs.1,89,396/- by the assessee for the purpose of payment by way of contribution towards an approved gratuity fund. Therefore, the Tribunal was right in holding that the claim of Rs.1,89,396/- was allowable under Section 40A(7)(b)(i) of the Act. In this view of the matter, the question No.1 is answered in the affirmative, in favour of the assessee and against the Revenue.

4. Under Section 36(1)(v) of the Act, it is provided that deductions will be provided in respect of any sum paid by the assessee as employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust. There is no dispute about the fact that the amount of Rs.3,95,491/- was paid by the assessee in the previous year. Clause (v) of Section 36(1) refers to the payment by the assessee as an employer by way of contribution towards an approved gratuity fund created by him. There is also no dispute about the fact that there was an approved gratuity fund created by the assessee within the meaning of Section 36(1)(v). Therefore, the Tribunal was right in holding that the claim of Rs.3,95,491/- was allowable under Section 36(1)(v) on the basis of payment since the assessee had, undisputedly, created an irrevocable trust for gratuity for its employees, which was approved by the Commissioner by his order dated 26th March, 1976. The question No.2 referred to us is, therefore, answered in the affirmative, in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[A. L. DAVE, J.]

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